

ST 98-34

Tax Type: SALES TAX

Issue: Organizational Exemption From Use Tax (Charitable)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

COMMUNITY BUSINESS,

APPLICANT

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

No:

Sales Tax Exemption

**Robert C. Rymek
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Alan Osheff for the Illinois Department of Revenue

SYNOPSIS: On May 13, 1996, COMMUNITY BUSINESS (hereinafter “CB” or the “applicant”) wrote to the Illinois Department of Revenue (hereinafter the “Department”) to request that the Department issue it an exemption identification number so that it could purchase tangible personal property at retail free from the imposition of Use and related taxes as set forth in 35 ILCS 105/1 *et seq.* On March 24, 1997, the Department denied CB’s application. CB protested the Department’s denial and requested a hearing.

The sole issue to be determined at the hearing was whether CB qualifies for an exemption identification number as “a corporation, society, association, foundation or institution organized and operated exclusively for charitable *** or educational purposes[.]” 35 ILCS 105/3-5(4). Following a careful review of all the evidence

presented at the hearing, I recommend that the Department's tentative denial of exemption be affirmed and finalized as issued.

FINDINGS OF FACT

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department's March 24, 1997, Tentative Denial of Exemption. Department Ex. No. 1.
2. CB was incorporated in August of 1995 under the General Not For Profit Corporation Act. Joint Ex. No. 1, Tr. pp. 4-7, Doc. A.¹
3. The applicant's amended articles of incorporation provide, *inter alia*, that the applicant was organized for charitable purposes. Joint Ex. No. 1, Doc. A.
4. The applicant's articles of incorporation and bylaws have no provisions relating to stock or shareholders or membership. Joint Ex. No. 1, Doc. A.
5. CB attempts to "strengthen the voice of parents in inner-city communities" by providing training workshops in conjunction with community centers such as the Erie House, Emerson House, Logan Square, the Family Institute of Northwestern University and Onward House. Joint Ex. No. 1, pp. 27-31; Tr. p. 12.
6. CB's training workshops are designed to help residents of low-income communities become self-reliant family and community leaders by helping residents identify personal, family, school and community goals. Tr. pp. 6, 10.
7. Parents who receive services from CB do not have to pay CB. Joint Ex. No. 1, p. 17; Tr. p. 18.

¹ Joint Ex. No. 1 is a transcript of a deposition given by CB's Director. During the course of the hearing, it was agreed that the deposition, along with documents referenced therein

8. The community organizations do not directly pay CB for CB's services. However these organizations and CB jointly raise money which then goes to CB pursuant to contracts between the community organizations and CB. Joint Ex. No. 1, p. 17.
9. Between October 1, 1995 and September 30, 1996, the applicant had revenue of \$67,213. Approximately 42% of that revenue was derived from grants while 56% was from contract revenue. Joint Ex. No. 1, Doc. B.
10. Between October 1, 1994 and September 30, 1995, the applicant had revenue of \$56,070. Approximately 71% of that revenue was derived from grants while 29% was from contract revenue. Joint Ex. No. 1, Doc. B.
11. Salaries of employees are the applicant's primary expense with such salaries totaling over 75% of the applicant's expenditures in the 1994-1995 fiscal year and almost 90% of the applicant's expenditures in the 1995-1996 fiscal year. Joint Ex. No. 1, Doc. B.
12. The applicant's Director, JANE DOE, is not a full-time employee. She works a 36-hour workweek and receives an annual salary of approximately \$46,800. Joint Ex. No. 1, pp. 7-8.
13. The applicant has three other employees all of whom work part-time and earn less than \$20,000 per year. Joint Ex. No. 1, pp. 8-9.
14. The applicant does not provide food, shelter, or money to individuals. The applicant merely provides training. Joint Ex. No. 1, p. 29.

CONCLUSIONS OF LAW

(Joint Ex. No. 1, Docs. A, B, and C), would be entered into evidence as a joint exhibit to expedite the instant hearing.

An examination of the record establishes that this applicant has not demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant the granting of a sales tax exemption number. Accordingly, under the reasoning given below, the determination by the Department denying the applicant a sales tax exemption number should be affirmed. In support thereof, I make the following conclusions:

The applicant seeks to qualify for a sales tax exemption identification number as a “corporation, society, association, foundation or institution organized and operated exclusively for charitable *** or educational purposes[.]” 35 ILCS 105/3-5(4); 35 ILCS 120/2-5(11). Although the applicant’s emphasis at the hearing was on qualifying as a charitable organization (Tr. p. 5), the applicant’s evidence indicated that the applicant’s activities were primarily educational in nature (Tr. p. 11). Accordingly I will consider whether the applicant qualifies for either a charitable or educational exemption.

Before turning to an analysis of whether the applicant qualifies for an educational exemption, it is worth noting the applicable standard of proof. The taxpayer bears the burden of proving, by “clear and convincing” evidence, that the exemption applies. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill. App. 3d 225, 231 (2nd Dist. 1991). Moreover, it is well established that there is a presumption against exemption and that therefore, “exemptions are to be strictly construed” with any doubts concerning the applicability of the exemptions “resolved in favor of taxation.” Van’s Material Co. Inc. v. Department of Revenue, 131 Ill. 2d 196 (1989).

In analyzing whether the applicant qualifies for an exemption as an institution organized exclusively² for “educational purposes,” it must be remembered that the term “educational purposes” is to be construed as meaning “school purposes.” 86 Ill. Admin. Code 130.2005(l)(1). Our supreme court has concluded that an institution is not organized for “school purposes” unless the institution: (1) offers an established, commonly accepted program of academic instruction, which compares favorably with courses of study offered in tax-supported schools; and (2) substantially lessens what would otherwise have been a governmental obligation. See Coyne Electrical School v. Paschen, 12 Ill. 2d 387, 392-93 (1957); 86 Ill. Admin. Code 130.2005(l)(3).

Although CB’s programs may be informative and thus “educational” in the broadest sense of the word, CB’s activities do not involve instruction in traditional academic subject areas offered in tax-supported schools, such as math, language, science or history. See Coyne supra at 385-387. Moreover, CB does not substantially lessen what would otherwise have been a governmental obligation because the government is not obligated to offer educational programs like those offered by CB. Accordingly, CB does not qualify for exemption as an institution organized exclusively for “educational purposes” as that phrase has been interpreted by our supreme court.

Having concluded that the applicant does not qualify for exemption as an educational institution, the next question is whether the applicant qualifies for exemption as a charitable organization under Illinois law. The applicant’s amended articles of incorporation provide, *inter alia*, that the applicant was organized for charitable purposes. However, merely because an organization’s governing legal documents set forth that it is

² The word “exclusively” when used in exemption statutes means “primary.” Gas

organized for charitable purposes does not relieve the organization of the burden of proving it actually operates as a charitable institution. See Methodist Old People's Home v. Korzen, 39 Ill.2d 149 (1968).

In Methodist Old People's Home, our supreme court set forth five factors to be considered in assessing whether an organization is actually an institution of public charity. According to Methodist Old People's Home, institutions of public charity: (1) have no capital stock or shareholders; (2) earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters; (3) dispense charity to all who need and apply for it; (4) do not provide gain or profit in a private sense to any person connected with it; and, (5) do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Methodist Old People's Home, *supra* at 157. These factors are not rigid requirements, but rather guidelines to be considered with an overall focus on whether the institution serves the public interest and lessens the State's burden. Du Page County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2nd Dist. 1995).

Applying the guidelines from Methodist Old People's Home, I find that the applicant has failed to present "clear and convincing" evidence that the applicant operates exclusively for charitable purposes. Although CB has established it has no stock or shareholders it has failed to present clear and convincing evidence that it possessed the remaining four characteristics of charitable institutions.

Research Institute v. Department of Revenue, 154 Ill. App. 3d 430, 436 (1987).

First, and most importantly, there was no evidence that CB has ever provided its services without first having “contracts” with organizations under which CB would be paid. Absent evidence that CB waives these contractual payments, there is an insufficient factual basis upon which to conclude that CB: (1) dispenses charity to all who need and apply for it; and (2) does not place obstacles of any character in the way of those who need and would avail themselves of CB’s services; and (3) derives its funds mainly from public and private charity³.

Finally, it is somewhat unclear whether CB provides gain or profit in a private sense to any person connected with it. Over 75% of CB’s annual revenues go toward paying salaries with the vast majority of those salary payments going to a single individual, Director JANE DOE. Ms. DOE’s salary is by no means exorbitant. Nevertheless, when considered in conjunction with the fact that CB contracts for its services, DOE’s salary is high enough, and a large enough proportion of CB’s revenues, that it raises questions as to whether CB is truly a charitable organization. See Lutheran General Health Care v. Department of Revenue, 231 Ill. App. 3d 652, 662 (1st Dist. 1992).

In conclusion, CB does not qualify for a charitable exemption because it was not established by clear and convincing evidence that CB provides its services to all who need and apply without regard for ability to pay. Moreover, CB does not qualify for an educational exemption because CB’s does not provide instruction in traditional academic subjects such as would be offered at tax-supported schools.

³ The most recent financial statement provided by CB indicates that the majority of CB’s income comes from contract revenues. See Finding of Fact No. 9.

WHEREFORE, for the reasons set forth above, I recommend that the Department's tentative determination denying the applicant a sales tax identification number be affirmed.

Date

Robert C. Rymek
Administrative Law Judge